IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3730 of 2007()

CRIME NO.43 OF 2007 OF KULAMAVU POLICE STATION

: PETITIONER/ACCUSED NO.2

VIKRAMAN, AGED 40, S/O. GOPALA PILLAI,
KALLIKKATTU HOUSE, KULAMAVU KARA,
ARAKKULAM VILLAGE.

BY ADV. SRI.JAISON JOSEPH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KULAMAVU POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3730 of 2007

Dated this the 20th day of June, 2007

ORDER

Application for anticipatory bail. Petitioner is the 2nd accused. The crux of the allegations is that the petitioner transported 18 litres of Indian made Foreign Liquor in a vehicle driven by the 1st accused. The petitioner was not available in that vehicle. The 1st accused was intercepted and the seizure was effected. The transportation was done by the 1st accused on behalf of the petitioner. This in short is the allegation. The petitioner has not been arrested so far. Investigation is in progress. The 1st accused has been arrested and has been released on bail. The alleged incident took place on 21.05.2007.

2. The learned counsel for the petitioner submits that no seizure was effected from the possession of the petitioner and that the theory that the transportation by the 1st accused was on behalf of the petitioner is without any basis. Counsel further submits that at any rate the decision in **Sabu v. State of Kerala** [2003(2) KLT 173] must help the petitioner to contend that the offence under Section 55(a) of the Kerala Abkari Act will not be revealed from the alleged facts.

3. The application is opposed by the learned Public Prosecutor . Interrogation of the petitioner is absolutely necessary. There are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor .

4. I find merit in the opposition by the learned Public Prosecutor . At this early stage, it is not necessary to consider the possible defences in detail. I am certainly of the opinion that in the interests of a fair, efficient and expeditious investigation, the petitioner need not be armed with an order of anticipatory bail at this stage. It is for the petitioner to appear before the learned Magistrate and seek bail in the regular and ordinary course. All contentions including the contention on the basis of **Sabu v. State of Kerala** (supra) can be urged by the petitioner before the learned Magistrate.

5. With the above observations, this application is, dismissed. Needless to say that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-